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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ RSA No.174-76/2005

Sh.Girdhari Lal (since deceased)
through LRs. ..... **Appellants**
Through : Mr.Madan Gera, Advocate.

Versus

Mrs. Shanti Devi (since deceased)
through LRs. ....**Respondents**
Through :

CORAM:
HON'BLE MR. JUSTICE J.P. SINGH

% ORDER
19.7.2005

CM. NO.9335/05

Allowed, subject to all just exceptions.

RSA No.174-76/05 & C.M.No.9334/2005

1. The original parties have expired. The second generation is contesting this matter. The litigation commenced in the year 1971.

2. This RSA under section 100 CPC is directed against the judgment and decree dated 4.4.2005 passed by the first appellate court dismissing the

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first appeal filed by the defendant (now LRs) against the judgment and decree dated 3.1.1978 passed by the Civil Judge, Delhi decreeing the suit of the plaintiff for specific performance of the agreement to sell and the trial court also gave directions for obtaining the requisite permission from the Land & Development Office, for sale of the property.

3. The suit was filed by Smt.Shanti Devi wife of Sh.Hakam Rai against Sh.Girdhari Lal as defendant no.1 and her own husband Sh.Hakam Rai as defendant no.2, for specific performance of the agreement to sell dated 23.10.1967 and mandatory injunction for directions to obtain necessary permission from L&D office for sale of the property. The said suit stood automatically abated. The matter went upto the High Court of Delhi. The abatment was ultimately set aside and parties were directed to file amended memos so as to bring the LRs of the parties on the record.

4. I have heard the ld. counsel for the appellant on the admission of the appeal and CM. No.9334/05 for stay of the operations of the first appellate court's judgment & decree. I have gone through both the judgments and copies of the documents placed on record.

5. The following "questions of law" have been proposed on behalf of the appellant in this Regular Second Appeal :

(a) Whether a suit for specific performance can be decreed when the facts necessary to constitute the cause of action as per Agreement entered into between the parties have neither been pleaded nor proved on the record, more particularly when the plaintiff was relying wholly upon the "Agreement".

(b) Whether Certificate of Registration granted by the Registering Authority is only a proof of "Admission of Document" or proof of "Execution of Document" as such.

(c) When execution of a document is challenged, whether Certificate of Registration alone will be sufficient proof of "due execution of document" and whether Registration alone shall dispense with necessity of proof.

(d) Whether a specific endorsement or independent certificate is required to be given on a document that the document was read over and explained to the Vendor in his vernacular language, more particularly if the document is drafted by a Deed Writer and illiteracy of Vendor is established on record.

(e) Whether Court can return a finding that plea of fraud cannot be looked into as the pleadings do not disclose the manner in which fraud was committed, more

particularly when the circumstances have been disclosed in pleading (written statement) pointing out clearly the fraudulent manner in which Agreement was got executed by defendant no.2 from Appellant by taking advantage of his not understanding English language and by keeping him in dark about the nature and contents of the documents.

(f) Whether court can look into the pleas made in the earlier Written Statements when Amended Written Statement was on record, more particularly, when Appellate Court itself has observed that earlier judgment delivered by Court was a waste piece of paper and cannot be looked into. When the earlier judgment in the same case could not be looked into, can earlier written statement be relied upon to the disadvantage of the Appellant.

6. The brief facts relating to the merits of the case are that Sh.Girdhari Lal (Defendant no.1) entered into an agreement to sell his property for a sum of Rs.12,000/- to Smt.Shanti Devi (Plaintiff) w/o Sh.Hakam Rai. The said agreement to sell was duly registered with the sub-registrar New Delhi on 27.10.1967 and a sum of Rs.8060/- was paid. Deft. No.1 delivered vacant possession of a portion of a property to the plaintiff. The balance amount was to be paid at the time of execution of the sale deed before the

sub-Registrar. As was and is the practice to bind down the vendor an irrevocable general power of attorney was executed by defendant no.1 (vendor) in favour of husband of plaintiff (Defendant no.2) authorizing him to complete the sale and that is why the plaintiff impleaded her husband as defendant no.2. The irrevocable general power of attorney was also registered with the office of Sub Registrar, New Delhi. When her husband applied to the Land and Development office for permission to sell, which was quite in order because it was a lease hold property, the vendor (defendant no.1) raised objections in the office of the L&D officer. The earlier suit was merely for mandatory injunction, so it was dismissed. The plaintiff preferred a appeal and was allowed to amend the plaint and this is how the suit for specific performance of agreement to sell and mandatory injunction came into being. The defendant No. 1 inter-alia contended that the documents were got executed by fraud and misrepresentation and in fact he was given a loan of Rs.5500/- and possession of the part of property was delivered as security and later he said that it was given on rent and rent was to be adjusted towards loan and in fact there was no agreement to sell or irrevocable power of attorney. On the pleadings of the parties the following

issues were framed by the trial court :-

(1) Whether defendant no.1 entered into an agreement of sale with the plaintiff on 23.10.1967 and received Rs.8060/- as part consideration? OPP.

(2) Whether defendant no.1 executed a irrevocable power of attorney in favour of defendant no.2 for completing the formalities of sale, if so, to what effect?

(3) Whether plaintiff obtained the agreement of sale in her favour and the power of attorney in favourof defendant no.2 by misrepresentation and fraud as alleged in the Written Statement? OPD-1.

(4) Whether the suit has been properly valued for the purposes of court fee and jurisdiction. OPP.

(5) Whether the plaintiff is entitled to the injunction prayed for?

(6) Whether plaintiff is willing to perform her part of the contract, if so, to what effect?

(7) Relief.

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7. All the issues were based on evidence and especially the evidence of the scribe PW-2 who deposed in the court that the documents were executed at the instance of defendant no.1 meaning thereby that the agreement to sell and the irrevocable general power of attorney were conscious decisions of the deft. No.1. The trial court held that no particulars of fraud or misrepresentation were detailed therefore the suit was decreed.

8. The first appellate court re-appreciated the entire evidence and did not believe in the story of the defendant no.1 that plaintiff and her husband had taken advantage of his illiteracy and after giving him a loan of Rs.5500/- got the agreement to sell and irrevocable power of attorney executed and that he also delivered a portion of immoveable property as security for the alleged loan or gave it on rent. The defendant No.1's contention was that he had paid Rs.1600/- against receipt and was ready to pay balance Rs.3900/-, of the loan amount but the plaintiff and her husband were not accepting that money and meanwhile he had revoked the power of attorney, though it was irrevocable.

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9. Ld. counsel for the appellant in this court has contended that registration of the agreement to sell and the irrevocable general power of attorney does not mean the execution of those documents. Secondly, when the earlier judgment before amendment was treated as a "waste paper" then earlier pleadings could not be relied upon. In my view when the pleadings were on the file the same could be taken note of for arriving at a just conclusion. The first appellate court has also referred to the contradictions on the part of the defendant No.1 regarding the alleged refund of Rs.1600/- in instalments and the plea that he was to charge rent for part of the portion handed over by him to the plaintiff and the said rent was to be adjusted by the plaintiff against the said loan. If that was so why he paid back Rs.1600/- in instalments and why he was ready to pay the balance of Rs.3900/- He did not even disclose the rate of rent which was to be adjusted against the loan.

10. Considering all the facts and circumstances and the reasons given by both the courts on the questions of facts and law, I do not find any question of law much less a substantial question of law to be decided in this Regular

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Second Appeal. The appeal is therefore dismissed. The CM. NO.9334/05 for stay of the operation of impunged judgement & decree does not survive and stands dismissed.

July 19, 2005
srb

J.P.Singh, J.